

TENNESSEE BOARD OF OPTOMETRY

DATE: March 22, 2006

TIME: 9:00 a.m.

LOCATION: Tennessee Room
Ground Floor, Cordell Hull Building
Nashville, TN

BOARD MEMBERS

PRESENT: Scott Spivey, OD, Chair
Jeff Foster, OD, Vice Chair
Jerry Richt, OD, Secretary
Eddie Abernathy, OD
Richard Orgain, OD
Pier Briley, Consumer Member

STAFF PRESENT: Sherry Owens, Board Administrator
Joan Burk, Board Administrator
Nicole Armstrong, Advisory Attorney
Barbara Maxwell, Administrative Director
Stacy Lannan, AARB1
Jerry Kosten, Rules Coordinator

Dr. Spivey, chair, called the meeting to order at 9:10 a.m. All Board members were present.

Ms. Owens introduced Joan Burk to the board members and stated Ms. Burk is the new board administrator for the Optometry Board.

Approval of Minutes

Upon review of the November 23, 2005 Board meeting minutes, Dr. Foster made a motion, seconded by Dr. Richt to approve the minutes upon adding Dr. Abernathy's name to the list of Board members present. The motion carried.

Conflict of Interest

Ms. Armstrong reviewed the conflict of interest policy with the Board asking the Board members to disclose any conflict of interest they may have prior to contested cases or any other legal proceedings or matters to determine if there is a conflict of interest. Ms. Armstrong stated that if a Board member has a conflict of interest they must recuse him/herself from the proceedings and leave the room during the hearing.

Office of General Counsel Report (OGC)

Ms. Armstrong reviewed the report stating Rule 05-1054 regarding criminal background checks was adopted by the Board May 10, 2005 and sent to the Attorney General on May 18, 2005, where it remains.

Ms. Armstrong said the rule amendments pertaining to contact lens prescription validity, screening panels and use of titles was adopted by the Board November 30, 2005 and was sent to the Attorney General on December 27, 2005, where it remains.

Ms. Armstrong said OGC has one (1) open case pertaining to the Board of Optometry.

Investigative Report

Ms. Armstrong reviewed the report stating there is one (1) complaint in Investigations against an optometrist. Ms. Armstrong said the open complaint is against a disciplined optometrist for violation of a Board order.

Disciplinary Report

Ms. Armstrong said there are currently two practitioners being monitored.

Ms. Armstrong said one disciplined optometrist had his license suspended indefinitely, must successfully complete a rehabilitation program, pay civil penalties and costs and appear before the board to provide compliance with the discipline to request reinstatement of his license.

Ms. Armstrong stated the other disciplined optometrist had his license placed on probation for no less than three years, must obtain outpatient treatment, pay civil penalties and appear before the board to provide compliance with the discipline to request probation be lifted.

Financial Report

Ms. Owens reviewed the financial report stating the board had a cumulative carryover of \$12,801 from June 30, 2004 and a current year net of \$59,884 from June 30, 2005 for a total cumulative carryover of \$72,685.99.

Administrative Report

Ms. Owens said of the 1089 licensed optometrists, 393 are injectable certified and 1000 are therapeutic certified. Ms. Owens said 388 optometrists are both injectable and therapeutic certified.

Dr. Orgain asked if there are 1089 active optometrists are 1000 optometrists therapeutic certified. Ms. Owens stated 1000 are therapeutic certified.

Report from Jerry Kosten, Rules Coordinator

Mr. Kosten stated the rule pertaining to the criminal background check requirement will be effective May 31, 2006. Mr. Kosten said Identix is the current vendor and has thirty-nine (39) locations throughout Tennessee. Mr. Kosten said the instructions for the criminal background check will be in the application, on the web site and in the newsletter.

Mr. Kosten said a rulemaking hearing was conducted February 9, 2006 to amend Rule 1045-2-.02 licensure process, Rule 1045-2-.07, diagnostic and therapeutic certification, Rule 1045-2-.13, optometric professional corporations and optometric professional limited liability companies. Mr. Kosten stated Theo Morrison, dispensing optician lobbyist, attended the hearing. Upon discussion, Dr. Abernathy made a motion, seconded by Dr. Orgain, to accept the amendment as written. A roll call vote was conducted and all members voted in the affirmative.

Ms. Owens said the Government Operations Committee is meeting Monday, March 27, 2006, at 1:30 p.m., regarding Health Related Board's audit which includes the Optometry Board and the board chair or his designee needs to attend.

Dr. Spivey stated he would attend the meeting on Monday.

Discuss and consider peer assistance program

The Board discussed the Tennessee Peer Assistance Program (TPAP) which Ms. Owens stated has an annual contract of \$16,000.

Ms. Armstrong suggested inviting Mike Harkreader of TPAP to attend the next Board meeting to give a presentation on the program and asked Ms. Owens to sunshine TPAP's presentation for the next meeting.

Dr. Foster asked how many board have a contract with a peer assistance program.

Ms. Armstrong stated several Boards use TPAP and the Medical Board uses the Tennessee Medical Association.

Dr. Spivey said a peer assistance program is not such an issue as to constitute paying \$16,000 annually for the program.

Review correspondence

Ms. Owens said the first correspondence is a memo from Larry Stoppel, Accreditation Council on Optometric Education (ACOE), regarding proposed revisions to the ACOE professional optometric degree program standards. Ms. Owens said this is for the board's information and a response is unnecessary.

The Board discussed an e-mail from Dr. Foster in which he asks the Board to consider discussing approval of vision therapy codes requested by Dr. Clopton, Mr. Odom, and Dr. Glen Steele of SECO. Dr. Foster said these codes are being used by Occupational Therapists to bill for vision training and is being reimbursed.

Upon review of a letter from the Tennessee Optometric Association (TOA) requesting the board approve certain codes for vision therapy, Dr. Foster made a motion, seconded by Dr. Orgain, to approve the submitted codes for vision therapy.

Discuss and consider ratification of newly licensed, reinstated, closed files, National Board of Examination waiver requests, injectable certification, professional practice name requests and continuing education approvals for Optometrists

Upon review, Dr. Foster made a motion, seconded by Dr. Abernathy, to approve the following newly licensed and reinstated optometrists:

Newly Licensed

Margaret M. Barrett
Jordan Trotter Brooks
Christopher Michael Dennis
Leslie A. Draper
Jimmy H. Elam
Michelle Esperanza
Johneen Elena Gilich
Jennifer Supple Jones
Anne M. Mueller
John E. Mullins
Billy B. Rainey
Clifton Wayne Ridings, Jr.
Ronald A. Stello

Reinstated

Rita S. Botnick, OD
John H. Goldsmith, OD

The motion carried.

Professional practice name requests

Upon review, Dr. Abernathy made a motion, seconded by Dr. Foster, to approve the following professional practice name requests:

Optique
Michele Sosono, OD

Jessup Eye Care
Jeffery Jessup, OD

Thompson Lane Eye Care
Jeffrey Jessup, OD

The motion carried.

Review continuing education courses for approval

Upon review of the course submitted by **Regional Eye Center**, Dr. Abernathy made a motion, seconded by Dr. Richt, to request a more detailed outline before making a decision to approve/deny the course. The motion carried.

Upon review of the course submitted by **Wang Institute**, Dr. Orgain made a motion, seconded by Dr. Richt, to delay the approval/denial of the course until receipt of the course hours and Cope approval. The motion carried.

Upon review of the course submitted by **Premiere Eye Care**, Dr. Foster made a motion, seconded by Dr. Orgain, to approve the course. The motion carried.

Upon review of the course submitted by **Southeast Eye Specialist**, Dr. Richt made a motion, seconded by Dr. Foster, to contact Southeast Eye Specialist and request a power point presentation which includes the course outline. The motion carried.

Dr. Richt stated there are two-hundred (200) Cope reviewers across the country and the Board can require continuing education course providers to be cope approved prior to submitting request to the Board. Dr. Richt further stated that 25% of the states require Cope approval and that Cope approved courses are accepted in all states.

Dr. Foster said the Tennessee Optometry Association (TOA) is having a Board meeting March 29, 2006 and they could be told that the Board wants to use Cope approved continuing education courses only.

Ms. Armstrong suggested that the Board sunshine a rule amendment for the next meeting to allow only Cope approved continuing education courses.

Review licensure files

Upon review, Dr. Foster made a motion, seconded by Dr. Orgain, to approve the injectable certification for **Katherine Gusso, OD**. The motion carried.

Upon review, Dr. Foster made a motion, seconded by Dr. Abernathy, to delay the application of **Jeff Bateman, OD**, pending a letter from Dr. Bateman specifying the procedures covered in the 1997 injectable course offered by SECO. The motion carried.

Review Applications

Upon review of the application for **Alan Fertell, OD** and request of a waiver of the Treatment and Management of Occular Disease (TMOD) examination, Dr. Richt made a motion, seconded by Dr. Spivey, to approve the waiver subject to Dr. Fertell successfully completing a six (6) hour course in oral medications. The motion carried.

Upon review of the application for **Don Lee Jackson, OD** and request of a waiver of Parts 1, 2 and 3 of the National Board of Examiners in Optometry examinations, Dr. Orgain stated Dr. Jackson is licensed in Texas and Mississippi with therapeutic status and passed the TMOD examination. Dr. Richt made a motion, seconded by Dr. Spivey, to approve Dr. Jackson for licensure. The motion carried.

Upon review of the application for **Willis C. Maples, OD** and request of a waiver of Parts 1, 2 and 3 of the National Board of Examiners in Optometry examinations, Dr. Foster made a motion, seconded by Dr. Richt, to grant Dr. Maples request for a waiver and approve him for licensure. The motion carried.

Upon review of the application for **David Sterna, OD** and request of a waiver of Part 3 of the National Board of Examiners in Optometry examination, Dr. Spivey made a motion, seconded by Dr. Foster, to grant the waiver and approving Dr. Sterna for licensure upon successfully completing a six (6) hour course in oral medications. The motion carried.

Upon review of the application of **Kelly Dyson, OD** which obtained information regarding a misdemeanor, Dr. Abernathy made a motion, seconded by Dr. Richt, to approve Dr. Dyson for licensure. The motion carried.

The Board reviewed a reinstatement application of **Gary Hubbard, OD** who lives in Morton, Virginia which is twenty (20) miles over the Tennessee line. Ms. Owens said Dr. Hubbard submitted a notarized statement stating he did not practice in Tennessee during the time his license was in an expired status. Dr. Richt made a motion, seconded by Dr. Spivey, to approve Dr. Hubbard for licensure. The motion carried.

Lenscrafters update and sale of contact lens update

Ms. Armstrong said the Attorney General's Office informed her the Supreme Court denied Lenscrafters' appeal and upheld the State's decision that optometrist are required to operate separately from retail stores.

Ms. Armstrong said the Office of General Counsel (OGC) is accepting complaints and will prosecute optometrists in violation of the statutes and rules. Ms. Armstrong said the cost of the Lenscrafters case was over \$300,000.

Dr. Spivey asked **Robert Simon, OD** who is in the audience if he would like to address the Board. Dr. Simon stated he is an optometrist practicing at Lenscrafters in Murfreesboro, TN. and since the ruling regarding the case he is not renewing his lease which ends in May 2006.

Dr. Simon discussed his lease and experience with Lenscrafters and said he could not access his office after hours and said he would like to have the Board issue penalties to resolve the issue of two doors.

Dr. Spivey asked **Eugene Bulson**, lead attorney for the Lenscrafters case, from the firm Cummings, Conners & Berry to address the board regarding the case.

Mr. Bulson stated the litigation was lengthy and much contested with a lot of discovery. Mr. Bulson said the litigation was filed in the late 1990's by Lenscrafters, Cole Vision (Pearl Vision) and US Vision (Sears Optical) claiming the TN Optometry Act is unconstitutional by precluding optometrists from operating in an establishment without separate doors.

Mr. Burlson said the court determined that the allegations were not accurate and the act did not violate any part of the 14th amendment.

Upon appeal by Lenscrafters, Mr. Burlson said the panel of six (6) Circuit Court of Appeals judges determined they agreed with Dr. Trauber's findings that you could not compare optometrists with retail stores and declined review of the case which affectively ended the case.

Upon conclusion of the discussion, Dr. Foster made a motion, seconded by Dr. Orgain, to go on record that the Board is opposed to a pending bill regarding grandfathering optometrists whose offices are located in a retail store as they are currently violating the law. The motion carried.

Ms. Armstrong said she would sit down with Investigations and the Attorney General to determine the next course of action in order to promulgate rules at the next meeting.

Mr. John Williams, Tennessee Optometric Association Attorney said he receives questions from optometrists negotiating leases and stated the board needs more specific rules which will help both optometrists and retail stores.

Dr. Spivey thanked Ms. Owens for her years of hard work as Board Administrator for the board.

Ms. Maxwell introduced Stacy Lannan who will be assisting Ms. Burk with the Optometry Board.

With no other business to conduct, Dr. Abernathy made a motion, seconded by Dr. Foster, to adjourn at 12:09. The motion carried.

